

Atty. Dkt. No. 073406-0403

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 100, 101, and 106-108 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 100, 101, and 106-113 are now pending in this application.

Applicant appreciates the useful telephonic interview with the Examiner and Supervisor Christopher Low on November 28, 2003, and the indication that the Examiner will promptly consider this amendment. In order to facilitate prosecution, the claims are amended above as suggested by Supervisor Low to the alternative sentence structure shown. Applicant submits that these amendments do not alter the scope of the claims, but only provide the alternate sentence structure suggested by Supervisor Low. The use of the term "bacterial growth inhibitory bacteriophage polypeptides" has the same meaning as the term "bacteriophage polypeptides that inhibit bacterial growth." Thus, claim scope is not altered, and the claims are not being amended for any reason related to patentability.

Applicant further appreciates the indication in the outstanding Office Action mailed October 7, 2003, that claims 101, 106, and 110-113 are allowed. Claims 101, and 106 were amended above to conform with independent claim 100, and not for any reason related to patentability.

Objections to Drawings

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The Draftsperson objected to Fig. 3. A replacement formal drawing for Fig. 3 will be filed separately by mail.

Rejections under 35 U.S.C. § 102

The Examiner rejected claims 100, 107, 108, and 109 under 35 U.S.C. § 102 as allegedly being anticipated by Jaynes et al. (WO 89/00199). The Examiner asserted that Jaynes teaches antimicrobial polypeptides which have utility as therapeutic agents or antimicrobials for bacterial infections. Applicant respectfully traverses this rejection.

As discussed in the telephonic interview, Applicant respectfully submits that the reference cited by the Examiner, Jaynes et al., cannot anticipate the present claims. The present claims are directed to methods for identifying bacterial targets for antibacterial agents. This is accomplished by identifying bacterial proteins that bind to bacteriophage polypeptides that inhibit bacterial growth, i.e., that are "bacterial growth inhibitory" bacteriophage polypeptides.

As the Federal Circuit has consistently held, a reference can only anticipate a claim if it includes each and every limitation of the claim. In this case, the cited Jaynes et al. reference does not describe each limitation. Jaynes et al. merely concerns the identification of certain bacteriophage proteins that inhibit host bacteria. There is no description of detection of binding of those bacteriophage proteins to particular bacterial proteins, or of the identification of any particular proteins to which the inhibitory bacteriophage proteins bind, or any indication that such binding indicates that those particular bacterial proteins are targets for antibacterial agents. Instead, Jaynes only describes the bacteriophage proteins and indicates they can themselves be used as antibacterial agents.

Because it lacks major elements of the present invention as specified in claim 100, Jaynes et al. does not describe the present invention and therefore cannot anticipate any of the present claims. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the outstanding rejections.

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Applicant believes that the present application is now in condition for allowance.
Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

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